



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

[Docket DARS-2021-0012]

RIN 0750-AK85

Defense Federal Acquisition Regulation Supplement: Maximizing the Use of American-Made Goods (DFARS Case 2019-D045)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement an Executive order regarding maximizing the use of American-made goods, products, and materials.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2019-D045, using any of the following methods:

- o *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for "DFARS Case 2019-D045" in the search box and select "Search." Select "Comment" and follow the instructions to submit a comment. Please include your name, company name (if any), and "DFARS Case 2019-D045" on any attached document.

o *Email:* *osd.dfars@mail.mil.* Include DFARS Case 2019-D045 in the subject line of the message.

Comments received generally will be posted without change to *<https://www.regulations.gov>*, including any personal information provided. To confirm receipt of your comment(s), please check *<https://www.regulations.gov>*, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, telephone 571-372-6174.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend the DFARS to implement section 2(a)(i) of Executive Order (E.O.) 13881, Maximizing Use of American-Made Goods, Products, and Materials, which changes the percentages used to determine whether a product is domestic or foreign under the Buy American statute (41 U.S.C. chapter 83). Section 2(a)(i) of E.O. 13881 is not inconsistent with E.O. 14005, Ensuring the Future Is Made in All of America by All of America's Workers, which supersedes E.O. 13881 to the extent that it is inconsistent with E.O. 14005. E.O. 13881 calls for more aggressive implementation of the Buy American statute to maximize the Government's procurement of American-made goods, products, and materials. The Buy American statute requires the purchase of domestic products (both end products and construction materials), except for instances when the domestic product is not available, the domestic product is only available

at an unreasonable cost, or it would not be in the public interest to buy the domestic product.

E.O. 13881 supersedes E.O. 10582, Prescribing Procedures for Certain Determinations under the Buy American Act, to the extent that it is inconsistent with E.O. 13881, by establishing that under the Buy American statute a product is foreign if the cost of the foreign components used in such end product constitutes 45 percent or more of the cost of all products used in such end products, except that iron and steel products are foreign if the cost of foreign iron and steel equals or constitutes 5 percent of the cost of all products used in iron and steel end products.

In order to promote economic and national security, stimulate economic growth, and create jobs, this rule proposes to strengthen domestic preferences under the Buy American statute by changing how a domestic product is defined, while also maintaining the exception to the statutory requirement for qualifying countries.

II. Discussion and Analysis

The Buy American statute is implemented in Federal Acquisition Regulation (FAR) part 25. Revisions to the FAR to implement E.O. 13881 have been accomplished under FAR Case 2019-016, published in the **Federal Register** on January 19, 2021 (86 FR 6180). This rule proposes revisions to DFARS part 225 and the associated clauses to implement the DoD-unique requirements and conforming changes associated with implementation of E.O. 13881.

Revisions are proposed to the definitions of "domestic end product" and "domestic construction material." Specifically, these definitions are each broken into two paragraphs to differentiate between end products and construction material that consist wholly or predominantly of iron or steel or a combination of both, and those that do not. Per the revised definition of "domestic end product," an end product that consists wholly or predominantly of iron or steel, or a combination of both, is only considered a domestic end product if the end product is manufactured in the United States, and the cost of iron and steel not produced in the United States, or a qualifying country, constitutes less than 5 percent of the cost of all the materials used in the end product. For "domestic construction material," if the construction material consists wholly or predominantly of iron or steel, or a combination of both, then the cost of iron and steel not produced in the United States (excluding fasteners) must constitute less than 5 percent of the cost of all the components used in the construction material. As explained in the definition of "foreign iron and steel" at FAR 25.003, "produced in the United States" means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives.

The definition of a "domestic end product" is further revised to stipulate that if the end product does not consist wholly or

predominantly of iron or steel, or a combination of both, then it is only considered a domestic end product if the end product is manufactured in the United States, and the cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 55 percent (an increase from 50 percent) of the cost of all its components. Similarly, for "domestic construction material" that does not consist wholly or predominantly of iron or steel, or a combination of both, the cost of its components mined, produced, or manufactured in the United States must exceed 55 percent (an increase from 50 percent) of the cost of all its components. In both cases, components of unknown origin are treated as foreign.

Conforming changes are made throughout the DFARS to implement the revised definitions, to include revisions to the description of the two-part test for domestic end products at DFARS 225.101. This rule also proposes definitions for the terms "predominantly of iron or steel or a combination of both" and "steel," which are used in the revised definitions of "domestic end product" and "domestic construction material." Conforming changes are also made to redesignate paragraph numbers to reflect current drafting conventions in definitions for a number of clauses that are being updated.

No changes are proposed in this rule to implement the E.O. 13881 change to the percentage factor used to determine whether the offered price of material of domestic origin is unreasonable

or inconsistent with public interest. E.O. 13881 increases the percentage factor from 6 percent to 20 percent for entities other than small businesses, and from 12 percent to 30 percent for small businesses. However, DoD already uses a 50 percent factor for both large and small businesses, so no change is necessary for DoD to comply with the increased percentage factors in E.O. 13881. In addition, E.O. 13881 does not remove any existing exemptions to the Buy American statute for products of qualifying countries; therefore, this rule does not include any proposed changes to the exemptions.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This proposed rule does not add any new provisions or clauses, nor change the applicability of existing provisions or clauses to contracts at or below the simplified acquisition threshold and contracts for the acquisition of commercial items, including commercially available off-the-shelf items.

IV. Expected Impact of the Rule

The current FAR contract clauses implementing the Buy American statute apply to a narrow set of procurements. In addition, because the Federal Acquisition Regulatory Council retained the commercially available off-the-shelf (COTS) items exception for most COTS items in its implementation of the E.O. in the FAR, the heightened domestic content requirements will not be applicable to those procurements. (See the final rule for FAR

Case 2019-016 published at 86 FR 6180 on January 19, 2021.)

This proposed DFARS rule takes the same approach.

Domestic industries supplying domestic end products are likely to benefit from a competitive advantage as a result of the FAR and DFARS implementation. Based on the E.O., it is unclear if the pool of qualified suppliers would be reduced, resulting in less competition and a possible increase in prices that the Government will pay to procure these products. At least three arguments point to the likelihood that any increase in burden on contractors would be small, if not de minimis:

- (1) Familiarization costs should be low.

- (2) Some, if not many, contractors may already be able to meet the more stringent threshold.

- (3) Costs incurred by contractors who adjust their supply chains, so that their end products qualify as domestic, will enjoy a larger price preference that should help to offset these costs over time.

Each of these arguments is explained below.

First, DoD does not anticipate significant costs from contractor familiarization with the rule given the recent publication of the FAR final rule implementing E.O. 13881 and the history of rulemaking and E.O.s in general in this area. The basic mechanics of the Buy American statute (e.g., how and when the price preference is used to favor domestic end products, certifications required of offerors to demonstrate end

products are domestic) continue to reflect processes that have been in place for decades and are not new to contractors.

Second, some, if not many, contractors may already be able to comply with the lower foreign content requirement needed to meet the definition of domestic end product under E.O. 13881 and the proposed rule. Laws such as the SECURE Technology Act (Pub. L. 115-390), which requires a series of actions to strengthen the Federal infrastructure for managing supply chain risks, are placing significantly increased emphasis on Federal agencies and Federal Government contractors to identify and reduce risk in their supply chains.

One way to reduce supply chain risk is to increase domestic sourcing of content. In addition, in the context of iron and steel, many laws already in place call for more stringent accounting of domestic sourcing of content. For example, the Recovery Act required that all construction material for a project for the construction, alteration, maintenance, or repair of a public building or a public work in the United States, consisting wholly or predominantly of iron or steel, had to be produced in the United States when using Recovery Act funds, to the extent consistent with trade agreements (see FAR 25.602-1, implementing section 1605 of the Recovery Act).

In addition, Federal contractors who also work on contracts funded under Federal grants may, in some cases, find that the steel, iron, and manufactured goods used in the project must be produced in the United States, as is the case for certain

funding administered by the Federal Transit Administration for public transportation projects (see 49 U.S.C. 5323(j)).

Third, it is anticipated that some contractors' products and construction materials may not meet the definition of domestic end product and construction material unless the contractors take steps to adjust their supply chains to increase the domestic content. Those contractors that make a business decision not to modify their supply chains will still be able to bid on DoD contracts but will no longer enjoy a price preference.

Accordingly, it is likely that the Federal market for iron and steel has already completed significant retooling and could meet the requirements of E.O. 13881 without too much additional effort.

This rule proposes to amend clauses that implement the Buy American statute. There are 4 clauses affected by the changes in this rule:

(1) 252.225-7001, Buy American and Balance of Payments Program (Basic and Alternate I).

(2) 252.225-7036, Buy American-Free Trade Agreements-Balance of Payments Program (Basic and Alternates I - V).

(3) 252.225-7044, Balance of Payments Program-Construction Material (Basic and Alternate I).

(4) 252.225-7045, Balance of Payments Program-Construction Material (Basic and Alternates I - III).

This rule changes the definitions of "domestic end product" and "domestic construction material." The rule also adds the definitions of "steel" and "predominantly of iron or steel or a combination of both" in the clauses to conform the DFARS with the FAR implementation of E.O. 13881.

According to the Federal Procurement Data System (FPDS) data for fiscal year (FY) 2017, FY 2018, and FY 2019 for new awards with a foreign place of performance for construction valued over the micro-purchase threshold and for awards for supplies, DoD awarded an average of 3,222 construction contracts with a foreign place of performance per year. In addition, DoD awarded an average of 332,607 supply contracts per year during FY 2017 through FY 2019.

In summary, the rule will strengthen domestic preferences under the Buy American statute and provide both large and small businesses the opportunity and incentive to deliver U.S. manufactured products from domestic suppliers. It is expected that this rule will benefit large and small U.S. manufacturers, including those of iron or steel.

Therefore, it is estimated that any increase in implementation costs associated with this rule is de minimis.

V. Executive Orders 12866 and 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public

health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808), before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not anticipated to be a major rule under 5 U.S.C. 804.

VII. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The rule proposes to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 2(a)(i) of Executive Order (E.O.) 13881, Maximizing Use of American-Made Goods, Products, and Materials, and also makes conforming

changes to the applicable clauses as a result of implementation of this E.O. in the Federal Acquisition Regulation (FAR).

The objective of this rule is to strengthen domestic preferences under the Buy American statute, as required by E.O. 13881, by changing how a domestic product and domestic construction material are defined.

Data was obtained from the Federal Procurement Data System (FPDS) on awards valued over the micro-purchase threshold in fiscal year (FY) 2017, FY 2018, and FY 2019 that had a foreign place of performance and were for construction. DoD awarded an average of 3,222 construction contracts with a foreign place of performance per year during FY 2017 through FY 2019. Of those construction contracts, approximately 65 were awarded to 32 unique small entities per year.

Data was also obtained from FPDS for FY 2017 through FY 2019 on awards valued over the micro-purchase threshold for supplies made in the United States. DoD awarded an average of 332,607 supply contracts per year during FY 2017 through FY 2019. Of those supply contracts, approximately 154,422 supply contracts were awarded to 13,480 unique small entities per year.

The rule will strengthen domestic preferences under the Buy American statute and provide small businesses the opportunity and incentive to deliver U.S. manufactured products from domestic suppliers. It is expected that this rule generally will benefit U.S. small business manufacturers, including those of iron or steel. Small business manufacturers who do not

already meet the increased domestic content requirements of this proposed rule may need to adjust their supply chains. DoD does not have data on how many small business manufacturers may decide to make such adjustments.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. This rule only changes the definitions of "domestic end product" and "domestic construction material" and adds the definitions of "predominantly of iron or steel or a combination of both" and "steel" to conform the DFARS with the FAR revisions as a result of E.O. 13881 implementation. Overall, the rule does not impose any additional compliance requirements on contractors or process procedures for the Government, other than to increase the percentages for use in the domestic content test applied to offers of manufactured end products.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the proposed rule that would meet the requirements of E.O. 13881.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit

such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2019-D045), in correspondence.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are proposed to be amended as follows:

1. The authority citation for parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

2. Amend section 225.003 by:

- a. Revising the definition of "Domestic end product";
- b. Removing the definition "Qualifying country component and qualifying country end product"; and
- c. Adding definitions for "Qualifying country component" and "Qualifying country end product" in alphabetical order.

The revision and additions read as follows:

225.003 Definitions.

* * * * *

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a commercially available off-the-shelf (COTS) item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

* * * * *

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

* * * * *

3. Revise the subpart 225.1 heading to read as follows:

SUBPART 225.1—BUY AMERICAN—SUPPLIES

4. Amend section 225.101 by revising paragraph (a)(ii) to read as follows:

225.101 General.

(a) * * *

(ii) (A) Except for an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of its U.S. and qualifying country components exceeds 55 percent of the cost of all its components. This test is applied to end products only and not to individual components.

(B) For an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of iron and steel not produced in the United States or a qualifying country must constitute less than 5 percent of the cost of all the components used in the end product. The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding commercially available off-the-shelf (COTS) fasteners. The domestic content test of the Buy American statute has not been waived for acquisitions of COTS items in this category, except for COTS fasteners.

* * * * *

225.502 [Amended]

5. Amend section 225.502 by—

a. In paragraph (c) (ii) (B), removing “225.504(1)” and adding “PGI 225.504(1)” in its place;

- b. In paragraph (c)(ii)(D), removing "225.504(2)" and adding "PGI 225.504(2)" in its place;
- c. In paragraph (c)(ii)(E)(1), removing "225.504(3)" and adding "PGI 225.504(3)" in its place; and
- d. In paragraph (c)(ii)(E)(2), removing "225.504(4)" and adding "PGI 225.504(4)" in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Amend section 252.225-7001 by—

- a. Removing the clause date of "(DEC 2017)" and adding "(DATE)" in its place;
 - b. In paragraph (a)—
 - i. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text, (i)(A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1)(i), (ii), and (iii), and (2), respectively;
 - ii. Revising the definition of "Domestic end product";
 - iii. Adding, in alphabetical order, the definition of "Predominantly of iron or steel or a combination of both";
 - iv. Revising the definition of "Qualifying country end product";and
 - v. Adding, in alphabetical order, the definition of "Steel";
- and

c. In Alternate I—

- i. Removing the clause date of "(DEC 2017)" and adding "(DATE)" in its place; and
- ii. In paragraph (a)—

- A. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text, (i) (A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1) (i), (ii), and (iii), and (2), respectively;
- B. Revising the definition of "Domestic end product";
- C. Adding, in alphabetical order, the definition of "Predominantly of iron or steel or a combination of both";
- D. Revising the definition of "Qualifying country end product";
- E. In the definition of "South Caucasus/Central and South Asian (SC/CASA) state end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively; and
- F. Adding, in alphabetical order, the definition of "Steel".

The revisions and additions read as follows:

252.225-7001 Buy American and Balance of Payments Program.

* * * * *

(a) * * *

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its

components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes

involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

* * * * *

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

Alternate I. * * *

(a) * * *

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end

product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar,

billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

* * * * *

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

* * * * *

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

7. Amend section 252.225-7036 by—

a. Removing the clause date of “(DEC 2017)” and adding “(DATE)” in its place.

b. In paragraph (a)—

i. In the definition of “Bahrainian end product”, redesignating paragraphs (i) and (ii) as paragraphs (1) and (2) respectively;

ii. In the definition of “Commercially available off-the-shelf (COTS) item”, redesignating paragraphs (i) introductory text, (i) (A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1) (i), (ii), and (iii), and (2) respectively;

iii. Revising the definition of “Domestic end product”;

iv. In the definition of “Free Trade Agreement country”, removing the semicolon and adding a period in its place;

v. In the definitions of “Free Trade Agreement country end product”, “Moroccan end product”, “Panamanian end product”, and “Peruvian end product”, redesignating paragraphs (i) and (ii) as paragraphs (1) and (2) respectively;

vi. Adding, in alphabetical order, the definition of “Predominantly of iron or steel or a combination of both”;

vii. Revising the definition of “Qualifying country end product”; and

viii. Adding, in alphabetical order, the definition of “Steel”.

c. In Alternate I—

i. Removing the clause date of “(DEC 2017)” and adding “(DATE)” in its place; and

ii. In paragraph (a)—

- A. In the definitions of "Bahrainian end product" and "Canadian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;
- B. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text, (i) (A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1) (i), (ii), and (iii), and (2), respectively;
- C. Revising the definition of "Domestic end product";
- D. In the definition of "Free Trade Agreement country", removing the semicolon and adding a period in its place;
- E. In the definitions of "Free Trade Agreement country end product", "Moroccan end product", "Panamanian end product", and "Peruvian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;
- F. Adding, in alphabetical order, the definition of "Predominantly of iron or steel or a combination of both";
- G. Revising the definition of "Qualifying country end product"; and
- H. Adding, in alphabetical order, the definition of "Steel".
- d. In Alternate II—
 - i. Removing the clause date of "(DEC 2017)" and adding "(DATE)" in its place; and
 - ii. In paragraph (a)—
 - A. In the definition of "Bahrainian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

- B. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text, (i) (A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1) (i), (ii), and (iii), and (2), respectively;
- C. Revising the definitions of "Domestic end product";
- D. In the definition of "Free Trade Agreement country", removing the semicolon and adding a period in its place;
- E. In the definitions of "Free Trade Agreement country end product", "Moroccan end product", "Panamanian end product", and "Peruvian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;
- F. Adding, in alphabetical order, the definition of "Predominantly of iron or steel or a combination of both";
- G. Revising the definition of "Qualifying country end product";
- H. In the definition of "South Caucasus/Central and South Asian (SC/CASA) state end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively; and
- I. Adding, in alphabetical order, the definition of "Steel".
- e. In Alternate III—
 - i. Removing the clause date of "(DEC 2017)" and adding "(DATE)" in its place; and
 - ii. In paragraph (a)—
 - A. In the definitions of "Bahrainian end product" and "Canadian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

- B. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text, (i) (A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1) (i), (ii), and (iii), and (2), respectively;
- C. Revising the definition of "Domestic end product";
- D. In the definition of "Free Trade Agreement country", removing the semicolon and adding a period in its place;
- E. In the definitions of "Free Trade Agreement country end product", "Moroccan end product", "Panamanian end product", and "Peruvian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;
- F. Adding, in alphabetical order, the definition of "Predominantly of iron or steel or a combination of both";
- G. Revising the definition of "Qualifying country end product";
- H. In the definition of "South Caucasus/Central and South Asian (SC/CASA) state end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively; and
- I. Adding, in alphabetical order, the definition of "Steel".
- f. In Alternate IV—
 - i. Removing the clause date of "(DEC 2017)" and adding "(DATE)" in its place; and
 - ii. In paragraph (a)—
 - A. In the definition of "Bahrainian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;
 - B. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text,

(i) (A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1) (i), (ii), and (iii), and (2), respectively;

C. Revising the definition of "Domestic end product";

D. In the definition of "Free Trade Agreement country", removing the semicolon and adding a period in its place;

E. In definitions of "Free Trade Agreement country end product", "Korean end product", "Moroccan end product", "Panamanian end product", and "Peruvian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

F. Adding, in alphabetical order, the definition of "Predominantly of iron or steel or a combination of both";

G. Revising the definition of "Qualifying country end product"; and

H. Adding, in alphabetical order, the definition of "Steel".

g. In Alternate V—

i. Removing the clause date of "(DEC 2017)" and adding "(DATE)" in its place; and

ii. In paragraph (a)—

A. In the definition of "Bahrainian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

B. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text, (i) (A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1) (i), (ii), and (iii), and (2), respectively;

C. Revising the definition of "Domestic end product";

- D. In the definition of "Free Trade Agreement country", removing the semicolon and adding a period in its place;
- E. In the definitions of "Free Trade Agreement country end product", "Korean end product", "Moroccan end product", "Panamanian end product", and "Peruvian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;
- F. Adding, in alphabetical order, the definition of "Predominantly of iron or steel or a combination of both";
- G. Revising the definition of "Qualifying country end product";
- H. In the definition of "South Caucasus/Central and South Asian (SC/CASA) state end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively; and
- I. Adding, in alphabetical order, the definition of "Steel".

The revisions and additions read as follows:

252.225-7036 Buy American-Free Trade Agreements-Balance of Payments Program.

* * * * *

(a) * * *

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United

States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

* * * * *

Qualifying country end product means—

- (1) An unmanufactured end product mined or produced in a qualifying country; or
- (2) An end product manufactured in a qualifying country if—
 - (i) The cost of the following types of components exceeds 50 percent of the cost of all its components:
 - (A) Components mined, produced, or manufactured in a qualifying country.
 - (B) Components mined, produced, or manufactured in the United States.
 - (C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or
 - (ii) The end product is a COTS item.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

Alternate I. * * *

(a) * * *

Domestic end product means—

- (1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(C) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel

not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith

estimate of the cost of iron or steel components excluding COTS fasteners.

* * * * *

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

Alternate II. * * *

(a) * * *

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent

of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

* * * * *

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

* * * * *

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

Alternate III. * * *

(a) * * *

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(C) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron and steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the

materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

* * * * *

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not

mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

* * * * *

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

Alternate IV. * * *

(a) * * *

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced,

or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or

steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

* * * * *

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

Alternate V. * * *

(a) * * *

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not

a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill

products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

* * * * *

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

* * * * *

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

8. Amend section 252.225-7044 by—

a. Removing the clause date of “(NOV 2014)” and adding “(DATE)” in its place.

b. In paragraph (a)—

i. In the definition of “Commercially available off-the-shelf (COTS) item”, redesignating paragraphs (i) introductory text, (i) (A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1) (i), (ii), and (iii), and (2), respectively;

- ii. In the definition of "Cost of components", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;
 - iii. Revising the definition of "Domestic construction material"; and
 - iv. Adding, in alphabetical order, the definitions of "Predominantly of iron or steel or a combination of both" and "Steel".
- c. In Alternate I-
- i. Removing the clause date of "(NOV 2014)" and adding "(DATE)" in its place; and
 - ii. In paragraph (a)-
 - A. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text, (i)(A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1)(i), (ii), and (iii), and (2), respectively;
 - B. In the definition of "Cost of components", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;
 - C. Revising the definition of "Domestic construction material";
 - D. Adding, in alphabetical order, the definition of "Predominantly of iron or steel or a combination of both";
 - E. In the definition of "SC/CASA state construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively; and
 - F. Adding, in alphabetical order, the definition of "Steel".

The revisions and additions read as follows:

252.225-7044 Balance of Payments Program-Construction Material.

* * * * *

(a) * * *

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and

steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

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Alternate I. * * *

(a) * * *

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron or steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or

sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

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Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

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9. Amend section 252.225-7045 by—

a. Removing the clause date of "(AUG 2019)" and adding "(DATE)" in its place.

b. In paragraph (a)–

i. In the definition of “Caribbean Basin country construction material”, redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

ii. In the definition of “Commercially available off-the-shelf (COTS) item”, redesignating paragraphs (i) introductory text, (i) (A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1) (i), (ii), and (iii), and (2), respectively;

iii. In the definition of “Cost of components”, redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

iv. In the definition of “Designated country”, redesignating paragraphs (i), (ii), (iii), and (iv) as paragraphs (1), (2), (3), and (4), respectively;

v. Revising the definition of “Domestic construction material”;

vi. In the definitions of “Free Trade Agreement country construction material” and “Least developed country construction material”, redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

vii. Adding, in alphabetical order, the definitions of “Predominantly of iron or steel or a combination of both” and “Steel”; and

viii. In the definition of “WTO GPA country construction material”, redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively.

c. In Alternate I–

i. Removing the clause date of "(AUG 2019)" and adding "(DATE)" in its place; and

ii. In paragraph (a)–

A. In the definitions of "Bahrainian or Mexican construction material" and "Caribbean Basin country construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

B. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text, (i) (A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1) (i), (ii), and (iii), and (2), respectively;

C. In the definition of "Cost of components", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

D. In the definition of "Designated country", redesignating paragraphs (i), (ii), (iii), and (iv) as paragraphs (1), (2), (3), and (4), respectively;

E. Revising the definition of "Domestic construction material";

F. In the definition of "Free Trade Agreement country construction material" and "Least developed country construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

G. Adding, in alphabetical order, the definitions of "Predominantly of iron or steel or a combination of both" and "Steel"; and

H. In the definition of "WTO GPA country construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively.

d. In Alternate II—

i. Removing the clause date of "(AUG 2019)" and adding "(DATE)" in its place; and

ii. In paragraph (a)—

A. In the definition of "Caribbean Basin country construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

B. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text, (i)(A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1)(i), (ii), and (iii), and (2), respectively;

C. In the definition of "Cost of components", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

D. In the definition of "Designated country", redesignating paragraphs (i), (ii), (iii), and (iv) as paragraphs (1), (2), (3), and (4), respectively;

E. Revising the definition of "Domestic construction material";

F. In the definitions of "Free Trade Agreement country construction material" and "Least developed country construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

G. Adding, in alphabetical order, the definition of "Predominantly of iron or steel or a combination of both";

H. In the definition of "SC/CASA state construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

I. Adding, in alphabetical order, the definition of "Steel"; and

J. In the definition of "WTO GPA country construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively.

e. In Alternate III—

i. Removing the clause date of "(AUG 2019)" and adding "(DATE)" in its place; and

ii. In paragraph (a)—

A. In the definition of "Caribbean Basin country construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

B. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text, (i)(A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1)(i), (ii), and (iii), and (2), respectively;

C. In the definition of "Cost of components", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

D. In the definition of "Designated country", redesignating paragraphs (i), (ii), (iii), and (iv) as paragraphs (1), (2), (3), and (4), respectively;

E. Revising the definition of "Domestic construction material";

F. In the definitions of "Free Trade Agreement country construction material" and "Least developed country construction

material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

G. Adding, in alphabetical order, the definition of

"Predominantly of iron or steel or a combination of both";

H. In the definition of "SC/CASA state construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

I. Adding, in alphabetical order, the definition of "Steel"; and

J. In the definition of "WTO GPA country construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively.

The revisions and additions read as follows:

252.225-7045 Balance of Payments Program—Construction Material Under Trade Agreements.

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(a) * * *

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same

class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the

explanation of cost of components in paragraph (1)(ii)(A) of this definition.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

Alternate I. * * *

(a) * * *

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost

of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the

explanation of cost of components in paragraph (1)(ii)(A) of this definition.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

Alternate II. * * *

(a) * * *

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost

of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the

explanation of cost of components in paragraph (1)(ii)(A) of this definition.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

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Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

Alternate III. * * *

(a) * * *

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains

multiple components, the cost of all the materials used in such construction material is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

* * * * *

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

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